

01:23:50 1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4
5 GREE, INC.,) (CIVIL ACTION NOS.
6 PLAINTIFFS,) (2:19-CV-70-JRG-RSP
7 VS.) (2:19-CV-71-JRG-RSP
8 SUPERCELL OY,) (MARSHALL, TEXAS
9 DEFENDANTS.) (SEPTEMBER 16, 2020
10) (1:51 P.M.
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TRANSCRIPT OF JURY TRIAL

VOLUME 10 - AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Counsel, the Court is now prepared to

hear from both Plaintiff and Defendant with regard to any

matters either party cares to seek relief on under Federal

Rule of Civil Procedure Rule 50(a).

I will remind you that the rule is very clear when

it says if a party's been fully heard on an issue during a

jury trial and the Court finds that a reasonable jury would

not have a legally-sufficient evidentiary basis to find for

the party on that issue, the Court may resolve the issue

against the party.

So with that context, let me identify -- and let

me say I know I told everybody before we broke for lunch

that I would be back at 1:30, and it's almost 2:00 o'clock,

but in the interim, I had the privilege of reading a

34-page brief written by the Defendants. So I took

additional time to do that and to consider that.

But let me ask at this time, for identification

purposes, what matters does Plaintiff seek to obtain relief

under rule 50(a)?

MR. MORLOCK: May I approach?

THE COURT: If you'd just go to the podium, and I

01:53:09 1 don't want to hear argument. I just want to identify the
01:53:13 2 legal issues upon which you seek relief under the rule.
01:53:16 3 Then I'll do the same from Defendant.

01:53:18 4 And in all likelihood, there will be relief
01:53:18 5 requested by both sides that are in direct opposition to
01:53:21 6 each other. And in those areas, I typically will hear
01:53:23 7 competing argument at the same time.

01:53:25 8 So if you will identify yourself for the record,
01:53:28 9 counsel, and then let me know what topics or subjects the
01:53:32 10 Plaintiff seeks relief on under Rule 50(a).

01:53:36 11 MR. MORLOCK: Thank you, Your Honor. Michael
01:53:37 12 Morlock for Plaintiff, GREE.

01:53:37 13 We seek relief for a finding of infringement of
01:53:43 14 the asserted patents, the '594, '137, '481, '655, and '873.

01:53:49 15 THE COURT: All five asserted patents?

01:53:53 16 MR. MORLOCK: Yes, Your Honor.

01:53:54 17 THE COURT: Okay.

01:53:54 18 MR. MORLOCK: And also a finding that the four
01:53:56 19 asserted patents that have not already been found valid on
01:53:59 20 summary judgment are valid.

01:54:02 21 THE COURT: Anything else?

01:54:10 22 MR. MORLOCK: No, Your Honor.

01:54:11 23 THE COURT: All right. Let me hear from Defendant
01:54:13 24 as to what matters Defendant seeks relief under Rule 50(a).

01:54:21 25 Why don't you go to the podium, as well,

01:54:23 1 Mr. Dacus?

01:54:24 2 MR. DACUS: I'll be happy to, Your Honor.

01:54:30 3 We have a critical question, Your Honor, to
01:54:30 4 clarify. We filed a Rule 50(a) motion, as the Court noted.

01:54:34 5 My understanding is the Court has had some time to consider
01:54:38 6 that motion. That motion lays out our bases for Rule
01:54:42 7 50(a). I just wanted to make sure on the record that the
01:54:45 8 Court considers that timely filed because that is --

01:54:48 9 THE COURT: The Court considers it timely filed,
01:54:51 10 and as I said, I took an extra 30 minutes beyond what I had
01:54:56 11 intended so that I could at least go through it initially
01:54:58 12 and see the main points that you made.

01:55:01 13 MR. DACUS: I understand.

01:55:02 14 THE COURT: But I'd still like you to identify for
01:55:02 15 the record the topical areas where you're seeking relief
01:55:05 16 under the rule.

01:55:05 17 MR. DACUS: I'll do that, and I'll let
01:55:08 18 Mr. McMichael address that, Your Honor.

01:55:09 19 THE COURT: All right.

01:55:17 20 MR. DACUS: Thank you.

01:55:17 21 MR. MCMICHAEL: Your Honor, in terms of the kind
01:55:20 22 of high-level topical issues, Supercell is seeking judgment
01:55:23 23 as a matter of law on the issues of non-infringement as to
01:55:27 24 the asserted patents, invalidity as to four of the five
01:55:30 25 asserted patents. So these are the '655 patent, the '873

01:55:34 1 patent, the '137 patent, and the '481 patent.

01:55:40 2 And Supercell is also seeking judgment as a matter
01:55:42 3 of law on limited damages.

01:55:49 4 THE COURT: Anything further?

01:55:51 5 MR. MCMICHAEL: Your Honor, I neglected to
01:55:55 6 mention, I -- I was considering no willful infringement to
01:55:58 7 be kind of a subsection of the topical areas of
01:56:01 8 infringement, just to be clear.

01:56:03 9 THE COURT: All right.

01:56:03 10 MR. MCMICHAEL: Thank you, Your Honor.

01:56:08 11 THE COURT: Well, let's start with the
01:56:10 12 diametrically opposed motions under Rule 50(a) by the
01:56:14 13 parties as to whether or not regarding the five
01:56:18 14 patents-in-suit there has been as a matter of law
01:56:20 15 infringement or as a matter of law non-infringement.

01:56:22 16 Let me hear first from the Plaintiff on that
01:56:25 17 issue, and then I'll hear responsively from the Defendant.

01:56:48 18 All right. Counsel, if you'll identify yourself
01:56:51 19 for the record and then proceed.

01:56:52 20 MR. RINEHART: Yes, Your Honor. Andrew Rinehart
01:56:55 21 on behalf of the Plaintiff, GREE.

01:56:57 22 GREE moves for a finding of judgment as a -- as a
01:57:05 23 matter of law of infringement of the five asserted patents
01:57:07 24 in this case. There are five asserted patents.

01:57:11 25 The first ground is that GREE moves for judgment

01:57:15 1 as a matter of law as to direct infringement of Claim 2 of
01:57:18 2 U.S. Patent No. 9,597,594 by Supercell through its accused
01:57:24 3 video game service Clash of Clans.

01:57:26 4 GREE moves for judgment as a matter of law as to
01:57:30 5 infringement of Claims 1, 2, and 15 of U.S. Patent No.

01:57:39 6 9,604 --

01:57:40 7 THE COURT: Let me stop you, counsel. Are you
01:57:42 8 going to recite each asserted patent and each patent number
01:57:45 9 by its full number? I know what the patents-in-suit are,
01:57:48 10 and I know what the asserted claims are.

01:57:48 11 MR. RINEHART: Very well.

01:57:51 12 THE COURT: I assume you're telling me that GREE
01:57:53 13 seeks matter -- seeks judgment as a matter of law that all
01:57:55 14 of the asserted claims of the five patents-in-suit have
01:57:57 15 been infringed?

01:57:58 16 MR. RINEHART: That is correct, Your Honor.

01:57:59 17 THE COURT: Let me hear brief and targeted
01:58:01 18 argument on why you've asserted that.

01:58:03 19 MR. RINEHART: Yes, Your Honor.

01:58:04 20 GREE has presented testimony from its technical
01:58:07 21 expert, Dr. Robert Akl, as well as testimony in the form of
01:58:11 22 documents, Supercell's source code, and witness testimony
01:58:13 23 from Supercell's own witnesses, that proves by a
01:58:17 24 preponderance of the evidence that the accused video game
01:58:20 25 services Clash of Clans, Clash Royale, and Brawl Stars each

01:58:26 1 meet all of the elements of the asserted claims of the five
01:58:31 2 asserted patents.

01:58:31 3 Dr. Akl analyzed Supercell's source code, the
01:58:37 4 accused video game services, and created demonstrative
01:58:40 5 exhibits to depict the functionality of those games that
01:58:44 6 infringes the asserted claims.

01:58:47 7 Supercell has also admitted that it owns and
01:58:49 8 operates servers in its name in the United States upon
01:58:52 9 which the source code for those games runs and executes.

01:58:55 10 Consequently, Your Honor, the Plaintiff has proven
01:59:08 11 by a preponderance of the evidence that the asserted claims
01:59:09 12 of the asserted patents are directly infringed by
01:59:12 13 Supercell -- by Supercell through the accused video game
01:59:15 14 services. And GREE, therefore, seeks judgment as a matter
01:59:18 15 of law of infringement.

01:59:24 16 THE COURT: All right.

01:59:25 17 MR. RINEHART: Thank you, Your Honor.

01:59:26 18 THE COURT: Let me hear a responsive argument from
01:59:31 19 the Defendant. And if you wish, counsel, you can include
01:59:33 20 your willfulness arguments as a part of the argument
01:59:37 21 regarding non-infringement.

01:59:39 22 MR. MCMICHAEL: Thank you, Your Honor.

01:59:46 23 Just to -- just to start with, I think we heard
01:59:50 24 the standard, preponderance of the evidence. And -- and in
01:59:53 25 terms of the judgment as a matter of law standard that

01:59:54 1 Plaintiff is seeking, I believe that's just not the correct
01:59:57 2 standard for the motion.

01:59:59 3 And so I know Your Honor hasn't had a whole lot of
02:00:03 4 time to review the brief, but in our briefing, I think we
02:00:07 5 -- we talk about how Dr. Akl presented evidence as to
02:00:10 6 Claim 1 as the starting point, which is the independent
02:00:13 7 claim that's not asserted. And he said that the Clash of
02:00:17 8 Clans layout editor meets this limitation when the user
02:00:19 9 uses the set as active button.

02:00:22 10 But as we've shown through the testimony of our
02:00:24 11 own technical expert, the -- no substantial evidence showed
02:00:27 12 that Clash of Clans actually moves the game contents from
02:00:32 13 first positions to second positions, as was cited in the
02:00:37 14 claim language.

02:00:37 15 And what actually happens is that in Clash of
02:00:40 16 Clans, the -- the layout is cleared completely and all of
02:00:43 17 the positions of the buildings are reset and then
02:00:45 18 everything is reinitialized.

02:00:47 19 So we don't believe that that limitation is
02:00:50 20 satisfied.

02:00:50 21 THE COURT: I'm aware of that particular argument
02:00:53 22 and the competing views on what the plain and ordinary
02:00:56 23 meaning of moving is.

02:00:58 24 MR. MCMICHAEL: Thank you, Your Honor.

02:01:04 25 As to Claim 2, we also believe that the claim

02:01:08 1 limitation when the template related to the different
02:01:11 2 player is applied, the computer moves the game contents, I
02:01:14 3 think this falls under kind of a similar -- under a similar
02:01:19 4 argument.

02:01:19 5 And we believe that this -- the evidence that GREE
02:01:20 6 presented does not support that that claim limitation is
02:01:23 7 met because a user can't actually directly apply the --
02:01:27 8 another user's layout.

02:01:29 9 And there are intervening steps that happen. And
02:01:32 10 in those intervening steps, that template that the
02:01:34 11 Plaintiff is pointing to becomes no longer related to
02:01:39 12 the -- to the other user.

02:01:41 13 And there are also intervening steps where --
02:01:44 14 it's -- it's not as though the template just gets applied.
02:01:48 15 There are additional steps and additional, for lack of a
02:01:52 16 better word, barriers that -- that the user needs to do
02:01:55 17 between those steps happening.

02:02:03 18 THE COURT: What else?

02:02:04 19 MR. MCMICHAEL: Your Honor, we also believe that
02:02:06 20 because this is a method claim, I believe Dr. Akl offered
02:02:10 21 some testimony that direct infringement of this method
02:02:11 22 claim is happening when users are using this on their
02:02:15 23 mobile devices.

02:02:16 24 We heard testimony about this today that what was
02:02:19 25 actually shown by Dr. Akl was not performance of this

02:02:22 1 method by taking a template from another user. It was
02:02:26 2 actually taking it -- trying to copy and apply a template
02:02:29 3 from himself.

02:02:31 4 So just generally with respect to the fact that
02:02:33 5 this is a method claim, we believe there hasn't been
02:02:37 6 sufficient -- sufficient evidence of that, in particular,
02:02:41 7 from Dr. Akl.

02:02:41 8 And then, finally, Your Honor, as to -- to the
02:02:48 9 extent there's a -- an issue of divided infringement here,
02:02:51 10 we believe that Plaintiff has not presented substantial
02:02:55 11 evidence to support a finding that Supercell is controlling
02:02:57 12 or directing each of the method steps to be performed, or
02:03:07 13 that all of these things can be attributable to Supercell.
02:03:10 14 It was not controlling the users of its games.

02:03:14 15 THE COURT: Well, I don't think, counsel,
02:03:16 16 substantial evidence is the test under Rule 50(a). I think
02:03:20 17 it's clear that the Court has to find that a reasonable
02:03:23 18 jury would not have a legally-sufficient evidentiary basis
02:03:26 19 to find, or to find otherwise, which is probably a higher
02:03:31 20 standard than what you just recited.

02:03:34 21 MR. MCMICHAEL: Your Honor, that's correct.

02:03:35 22 THE COURT: What else on your non-infringement
02:03:37 23 argument?

02:03:38 24 MR. MCMICHAEL: Well, to the extent we get into
02:03:41 25 the willful infringement issue, Your Honor, I think from

02:03:44 1 our perspective, the evidence that Plaintiff has presented
02:03:47 2 in this case about willful infringement does not --
02:03:50 3 certainly, does not rise to the level of willful
02:03:52 4 infringement. Really, what -- what's been pointed to in
02:03:55 5 this case is the -- I guess very circumstantial assertions
02:03:59 6 that Supercell knew certain things and didn't take action.

02:04:02 7 And, really, what that boils down to is this
02:04:05 8 position that because Supercell did not immediately change
02:04:09 9 its game, that constitutes willful infringement.

02:04:11 10 But I think the evidence that Supercell has
02:04:14 11 presented from its fact witnesses and from its expert
02:04:18 12 witness on this issue shows that this -- the conduct here,
02:04:22 13 to the extent there is infringement, just does not rise to
02:04:25 14 the level of willful infringement.

02:04:27 15 THE COURT: All right. Anything else you'd like
02:04:31 16 to add?

02:04:32 17 MR. MCMICHAEL: Your Honor, I believe that's --
02:04:40 18 that covers it for the '594 patent.

02:04:42 19 THE COURT: All right. Mr. Rinehart, would you
02:04:46 20 like to address the willfulness issue, briefly?

02:04:49 21 MR. RINEHART: Yes, Your Honor.

02:04:51 22 THE COURT: I will certainly allow you to do that,
02:04:53 23 and then we'll move on to the validity/invalidity dispute.

02:05:01 24 MR. RINEHART: Your Honor, with respect to
02:05:05 25 willfulness, we have seen evidence that Supercell was put

02:05:09 1 on notice of the asserted patents through at least letters
02:05:14 2 sent from GREE to Supercell. We've seen internal messaging
02:05:19 3 system communications between Supercell employees
02:05:22 4 evidencing awareness of the GREE patents at issue.

02:05:26 5 To the extent that Supercell was not aware of the
02:05:29 6 patents, it was willfully blind to their existence based on
02:05:32 7 its knowledge of the Japanese litigation between the two
02:05:36 8 entities.

02:05:36 9 And, finally, Supercell has not provided any
02:05:38 10 opinion of counsel as to non-infringement of the asserted
02:05:41 11 patents such that it may have a good-faith belief that it
02:05:44 12 does not infringe.

02:05:45 13 THE COURT: All right. Thank you.

02:05:48 14 MR. DACUS: Your Honor?

02:05:49 15 THE COURT: Yes.

02:05:49 16 MR. DACUS: I think we may have had a
02:05:51 17 misunderstanding at our table about whether or not we
02:05:54 18 should address all patents. And Ms. Kaempf needs to
02:05:58 19 address two of the patents.

02:05:59 20 THE COURT: I want to hear all the arguments on
02:06:01 21 the issue of infringement or non-infringement.

02:06:03 22 MR. DACUS: I understand that.

02:06:03 23 THE COURT: If you've limit -- if you've
02:06:06 24 unintentionally limited your argument, I don't want to draw
02:06:09 25 the process out, but I want you to have an opportunity to

02:06:12 1 fully put into the record what you think you need to.

02:06:15 2 MR. DACUS: Thank you very much.

02:06:16 3 MS. KAEMPF: Your Honor, may I?

02:06:17 4 THE COURT: You may.

02:06:18 5 MS. KAEMPF: Jessica Kaempf for Supercell.

02:06:22 6 So I'm going to be addressing two of the patents,

02:06:26 7 the '873 patent and the '655 patent.

02:06:27 8 And so with respect to the '873 patent, one of the

02:06:32 9 claim elements is -- it requires displaying a frame in

02:06:39 10 accordance with a position of -- of the first touch

02:06:44 11 operation.

02:06:44 12 And it's undisputed that what the -- what is being

02:06:48 13 accused in the case -- if you remember the Brawl Stars

02:06:53 14 game, it's the red joystick on the right-hand side that

02:06:57 15 controls aiming and shooting.

02:06:59 16 And what we heard was that the position of the

02:07:01 17 alleged frame, which is the cone, is determined by the

02:07:04 18 position of the brawler, which, in turn, is controlled by

02:07:09 19 not the red joystick but the blue joystick. And so the

02:07:14 20 touch on the red joystick does not determine the position

02:07:19 21 of the frame.

02:07:21 22 We also heard from Dr. Akl today. You may

02:07:26 23 remember his -- his demonstrative that had the cone and

02:07:30 24 like a yellow -- a yellow arrow. And he testified that the

02:07:35 25 cone is displayed in accordance with a direction. And

02:07:41 1 direction is not the claim element. The -- the claim
02:07:44 2 element is displaying a frame in accordance with a position
02:07:49 3 of the first touch operation.

02:07:51 4 And so, Your Honor, I think no reasonable juror
02:07:56 5 could find that the cone or the alleged frame is displayed
02:08:03 6 in accordance with the alleged -- with a position of the
02:08:06 7 alleged first touch operation, which is limited to the red
02:08:09 8 joystick.

02:08:11 9 THE COURT: All right.

02:08:12 10 MS. KAEMPF: We had a couple other arguments in
02:08:16 11 the -- in the written JMOL, but I think that is the most
02:08:19 12 important one that I'd like you to consider.

02:08:21 13 THE COURT: Do you have anything else for me?

02:08:23 14 MS. KAEMPF: With respect to the '655 patent, the
02:08:31 15 claim requires granting a second object if or when the
02:08:36 16 claim -- there are two asserted claims.

02:08:39 17 And -- and one -- one claim recites granting a
02:08:44 18 second object if a condition for granting the second object
02:08:47 19 is satisfied. The other one says granting a second object
02:08:52 20 when the condition is satisfied.

02:08:53 21 We briefed this during summary judgment, and
02:08:57 22 Magistrate Judge Payne found that if the condition is
02:09:04 23 satisfied, then the granting is mandatory and limiting. He
02:09:10 24 denied our summary judgment on the basis that there's a
02:09:14 25 factual -- that there may be a factual issue as to what the

02:09:17 1 conditions are.

02:09:18 2 But here there's -- there's no dispute between the
02:09:23 3 parties, no dispute between the experts that the claimed
02:09:26 4 condition that we're talking about is the condition of
02:09:28 5 having enough cards to fill your upgrade -- or to fill your
02:09:33 6 card meter.

02:09:34 7 There's also no dispute, and Dr. Akl confirmed
02:09:37 8 today, that once you fill up that upgrade meter, there's
02:09:42 9 still an additional condition that needs to be met, and
02:09:45 10 that is having enough gold.

02:09:47 11 So the element of granting a second object, which
02:09:53 12 is upgrading your -- upgraded card, that granting does not
02:09:57 13 occur if or when the condition for granting the second
02:10:05 14 object that Dr. Akl points to is satisfied.

02:10:11 15 In other words, if -- if or when a user fills up
02:10:15 16 their card meter, that does not -- the -- the upgraded card
02:10:21 17 does not get granted.

02:10:24 18 THE COURT: Anything further, Ms. Kaempf?

02:10:26 19 MS. KAEMPF: One more, Your Honor.

02:10:28 20 THE COURT: Okay.

02:10:29 21 MS. KAEMPF: Also, with respect to the '655
02:10:31 22 patent, the -- there is a claim element that requires
02:10:35 23 display data for selecting a first object from the
02:10:38 24 possessed objects possessed by the first user and selecting
02:10:46 25 a second user from the plurality of users.

02:10:48 1 And Dr. Akl testified that he is pointing to one
02:10:54 2 screen that only allows the user to select -- the donating
02:11:00 3 user to select a user.

02:11:02 4 We also heard from Dr. -- or GREE's survey --
02:11:09 5 survey expert who had information from Dr. Akl that the
02:11:15 6 selecting of an object occurs not by the first user -- or
02:11:22 7 it is done not by the first user but by the second user.

02:11:26 8 And the claim requires that the -- that it is the
02:11:32 9 first user that gets the display data for both selecting a
02:11:35 10 possessed -- an object from the possessed objects and
02:11:38 11 selecting a second user from the plurality of users.

02:11:42 12 THE COURT: All right. Thank you.

02:11:43 13 MS. KAEMPF: Thank you.

02:11:46 14 THE COURT: Before we leave the
02:11:48 15 infringement/non-infringement area, does Defendant have
02:11:50 16 anything else to add -- excuse me, Plaintiff, I misspoke?

02:11:55 17 MR. RINEHART: Yes, Your Honor.

02:11:56 18 THE COURT: All right. Briefly, please,
02:11:59 19 Mr. Rinehart.

02:12:07 20 MR. RINEHART: Your Honor, the Plaintiff also
02:12:10 21 seeks judgment as a matter of law with respect to indirect
02:12:13 22 infringement by Supercell resulting from the direct
02:12:18 23 infringement by users of the accused video game services;
02:12:22 24 that the evidence and argument with respect to that issue
02:12:24 25 went uncontested by Supercell's technical experts.

02:12:29 1 THE COURT: All right. Let's proceed to hear
02:12:34 2 competing argument from -- arguments from the parties with
02:12:36 3 regard to the validity or invalidity for the five asserted
02:12:44 4 patents-in-suit, namely the '655 patent, the '873 patent,
02:12:47 5 the '137 patent, and the '481.

02:12:53 6 Let me hear from the Defendants on this first,
02:12:55 7 since Defendant carries the burden of proof on invalidity.

02:13:13 8 MR. MCMICHAEL: Thank you, Your Honor.

02:13:14 9 And did I hear correctly that you'd like to focus
02:13:17 10 on the '655 patent, or is this all invalidity arguments?

02:13:19 11 THE COURT: All invalidity arguments.

02:13:22 12 MR. MCMICHAEL: Thank you, Your Honor.

02:13:22 13 THE COURT: Speak now or forever hold your peace.

02:13:26 14 MR. MCMICHAEL: I -- I'm doing my best to capture
02:13:28 15 what's in -- what's in the written motion. I think I have
02:13:31 16 it here.

02:13:32 17 With respect to the '655 patent, Defendant is
02:13:34 18 seeking judgment as a matter of law of invalidity of the
02:13:36 19 asserted claims because the evidence at trial established
02:13:38 20 that the asserted claims are invalid in light of
02:13:43 21 FarmVille -- the FarmVille game and FarmVille for Dummies,
02:13:47 22 as supported by the websites and other evidence relating to
02:13:50 23 that that was presented by Dr. Zagal.

02:13:52 24 He established that this -- these references were
02:13:54 25 publicly available and publicly accessible and it satisfied

02:13:58 1 each of the claim limitations of the asserted claims,
02:14:01 2 Claims 5 and 7.

02:14:02 3 And we believe that Plaintiff presented no
02:14:04 4 evidence in response from which a jury could determine that
02:14:08 5 those two claims are not invalid.

02:14:11 6 We also, with respect to the '655 patent, are
02:14:14 7 seeking judgment as a matter of law with respect to the
02:14:16 8 Mahajan patent that was discussed by Dr. Zagal.

02:14:20 9 It's a similar situation. He compared that
02:14:22 10 reference to the claims of the -- the asserted claims. And
02:14:26 11 we believe Plaintiff failed to provide rebuttal evidence
02:14:28 12 that would give a reasonable jury an ability to find those
02:14:34 13 claims invalid.

02:14:35 14 Turning to the '137 and '481 patents, we're
02:14:39 15 seeking judgment as a matter of law that the asserted
02:14:41 16 claims of those patents are invalid as anticipated and/or
02:14:46 17 rendered obvious by the prior art game Magic: The
02:14:51 18 Gathering.

02:14:51 19 Mr. Friedman testified -- I believe this was
02:14:54 20 yesterday -- about how that game was publicly assessable --
02:15:00 21 accessible and how that game relates to each of the
02:15:03 22 asserted claims of -- of these two patents.

02:15:04 23 Relatedly, we're also seeking judgment as a matter
02:15:06 24 of law with respect to the prior art reference BattleForge,
02:15:09 25 again, under anticipation and obviousness grounds.

02:15:12 1 With respect to the '873 patent, we're seeking
02:15:18 2 judgment as a matter of law that the claims are invalid as
02:15:20 3 rendered obvious by the prior art game Call of Mini Sniper,
02:15:25 4 either alone, by itself, or in view of the Sakurai patent
02:15:28 5 that Dr. Zagal discussed.

02:15:30 6 He established that that is prior art and that it
02:15:33 7 satisfies the aiming and shooting process that is discussed
02:15:38 8 in the '873 patent.

02:15:42 9 And Plaintiffs failed to provide rebuttal evidence
02:15:46 10 that would allow a jury to find those claims valid.

02:15:47 11 And then, finally, Your Honor, with respect to the
02:15:50 12 '873 patent, as well, we're seeking judgment as a matter of
02:15:53 13 law that the claims are anticipated by and rendered obvious
02:15:57 14 in light of the prior art game Sniper vs. Sniper.

02:16:02 15 And, again, Dr. Zagal testified about this
02:16:04 16 yesterday and how -- how that reference invalidates the
02:16:08 17 claims of the '873 patent.

02:16:09 18 Thank you, Your Honor.

02:16:14 19 THE COURT: Thank you.

02:16:15 20 Let me hear a response from Defendant -- excuse
02:16:18 21 me, Plaintiff.

02:16:19 22 MR. ABSHER: Hello, Your Honor. Alton Absher for
02:16:30 23 Plaintiff, GREE.

02:16:30 24 THE COURT: Please proceed.

02:16:32 25 MR. ABSHER: I'll start with the '655 patent.

02:16:34 1 The FarmVille reference, the game and the book,
02:16:41 2 neither reference -- neither the book nor the game itself
02:16:44 3 shows, for example, the claim limitation requiring
02:16:48 4 display -- display data that allows a user to select one of
02:16:53 5 a plurality of users and one of a plurality of second
02:16:57 6 objects.

02:16:58 7 There was testimony from Dr. Akl on that today.

02:17:02 8 Neither the FarmVille references nor the Mahajan patent
02:17:06 9 disclose that particular limitation, for example.

02:17:10 10 With regards to the '873 patent, both the Call of
02:17:15 11 Mini Sniper game and video and the Sniper vs. Sniper game
02:17:18 12 and video, we -- Dr. Akl presented testimony and evidence
02:17:22 13 regarding the failure of those references to disclose the
02:17:28 14 first frame indicative of a shooting effective range and
02:17:33 15 also the element present in both claims that requires the
02:17:36 16 server to control to attack in accordance with the second
02:17:41 17 touch operation.

02:17:42 18 In fact, for the Call of Mini Sniper video game,
02:17:46 19 Dr. Zagal did -- did not even argue -- did not even testify
02:17:51 20 that the server limitation -- the -- the control to attack
02:17:55 21 by the server limitation was met.

02:17:57 22 He did seem to testify that with regards to the
02:18:02 23 Sniper vs. Sniper video, that it would be obvious for
02:18:06 24 someone to do so, but he -- he did not articulate a
02:18:11 25 sufficient motivation to combine such that one of ordinary

02:18:14 1 skill in the art would have known to do so.

02:18:16 2 With that, I'd like to turn it over to my
02:18:22 3 colleague, Ms. Koballa, for discussion of the '137 and '481
02:18:28 4 patent, Your Honor.

02:18:30 5 THE COURT: That will be fine.

02:18:33 6 MS. KOBALLA: Good afternoon, Your Honor. Kasey
02:18:45 7 Koballa for Plaintiff, GREE.

02:18:47 8 THE COURT: Good afternoon.

02:18:47 9 MS. KOBALLA: GREE responds to Supercell's motion
02:18:49 10 for a judgment as a matter of law as to invalidity and also
02:18:53 11 moves for judgment as a matter of law as to validity of
02:18:56 12 Claims 1, 2, and 15 of the '137 patent and Claims 4 and 5
02:19:00 13 for the '481 patent.

02:19:01 14 A jury would not have a legally-sufficient
02:19:03 15 evidentiary basis --

02:19:05 16 THE COURT: Ms. Koballa, if you're going to read
02:19:07 17 to me, slow down.

02:19:08 18 MS. KOBALLA: Okay. I'm sorry.

02:19:09 19 A jury would not have a legally-sufficient
02:19:13 20 evidentiary basis to find that the patents are invalid as
02:19:18 21 obvious or anticipated over Magic: The Gathering or
02:19:23 22 BattleForge and the combination of Magic: Gathering and
02:19:29 23 BattleForge.

02:19:29 24 As Dr. Akl testified, the asserted prior art
02:19:35 25 Magic: The Gathering and BattleForge do not disclose each

02:19:37 1 and every element of the '137 and '481 patents, and the --
02:19:40 2 and Magic -- Magic and BattleForge combined also do not
02:19:43 3 disclose each and every element of the '137 and '481
02:19:48 4 patents.

02:19:48 5 Further, Dr. Akl testified that a person having
02:19:51 6 ordinary skill in the art would not have been motivated to
02:19:55 7 combine these references at the time of the invention.
02:19:59 8 Thus, GREE is entitled to judgment as a matter of law as to
02:20:02 9 validity of the asserted claims of the '137 and '481
02:20:09 10 patents.

02:20:09 11 THE COURT: Thank you, Ms. Koballa.

02:20:10 12 MS. KOBALLA: Thank you.

02:20:11 13 THE COURT: Anything further from the Plaintiff on
02:20:12 14 the validity issue?

02:20:14 15 MR. ABSHER: No -- no, Your Honor.

02:20:15 16 THE COURT: Anything further from Defendant on
02:20:17 17 this topic?

02:20:19 18 MR. DACUS: No, Your Honor. Thank you.

02:20:20 19 THE COURT: All right. Then I'll proceed to hear
02:20:25 20 argument with regard to Defendant's motion for judgment as
02:20:29 21 a matter of law regarding damages.

02:20:30 22 MR. MCMICHAEL: Thank you, Your Honor.

02:20:38 23 There are a few grounds to Defendant's motion for
02:20:44 24 judgment as a matter of law of no damages or limited
02:20:47 25 damages. And they all come down to the point that we

02:20:49 1 believe the Plaintiff has not presented legally-sufficient
02:20:52 2 evidence for a jury to find the royalty in this case.

02:20:56 3 First, we believe that Dr. Becker's opinions
02:20:59 4 regarding the '655 and the '594 patent and with respect to
02:21:02 5 how he calculated the starting point royalties, is
02:21:06 6 unreliable in view of the fact that, for example, he
02:21:11 7 misused the survey data from Dr. Neal.

02:21:13 8 We also believe that Dr. Becker's alternative
02:21:17 9 starting rates -- I believe one was an 8.6 percent rate and
02:21:22 10 one was a 3.36 percent rate, if I'm remembering correctly,
02:21:27 11 were unreliable and -- and should not have been considered
02:21:31 12 or could not be considered by the jury as -- as reliable
02:21:33 13 evidence.

02:21:34 14 Next, we believe that Dr. Becker's opinion as to a
02:21:37 15 reasonable royalty for the '137, '481, and '873 patents is
02:21:45 16 arbitrary and unreliable. We heard evidence from
02:21:49 17 Dr. Becker about how he got to a royalty rate for those
02:21:51 18 patents, and it was by adopting the survey results for the
02:21:54 19 '655 patent and just applying it to those three patents for
02:21:57 20 which there was no survey data.

02:21:59 21 What we didn't hear is any explanation of why an
02:22:02 22 expert or anyone would adopt the survey results for one
02:22:07 23 feature that was surveyed, as opposed to any other feature
02:22:10 24 that was surveyed. And so we believe that portion of
02:22:12 25 Dr. Becker's analysis is unreliable.

02:22:16 1 We further believe that Dr. Becker failed to
02:22:21 2 appropriately apportion damages in calculating the
02:22:24 3 reasonable royalty he presented. I think it was undisputed
02:22:27 4 and there was no evidence at trial suggesting that the
02:22:30 5 accused features drive demand such that the entire market
02:22:37 6 value rule would be appropriate, yet the reasonable royalty
02:22:39 7 that was presented by the Plaintiff is based on the total
02:22:42 8 revenues of Defendant and just a flat percentage of those
02:22:48 9 total -- total revenues.

02:22:49 10 We also believe and are seeking judgment as a
02:22:54 11 matter of law on the issue of the form of royalty. We
02:22:57 12 believe the only evidence that was presented at trial that
02:23:01 13 goes between a lump sum and a running royalty supports a
02:23:05 14 lump sum. And that's licenses produced by both sides in
02:23:09 15 this case. And we believe that's the only reliable
02:23:11 16 evidence and that no reasonable jury could find that a
02:23:14 17 running royalty is appropriate under these circumstances.

02:23:16 18 And, last, we believe -- we're seeking judgment as
02:23:25 19 a matter of law as to Plaintiff's claims for provisional
02:23:27 20 damages. We've discussed this a bit in prior briefing,
02:23:30 21 and, of course, in the written JMOL we filed.

02:23:33 22 But to recover provisional damages, the patentee
02:23:36 23 needs to prove that the accused infringer had actual notice
02:23:40 24 of the published patent application and that the patented
02:23:42 25 invention is substantially identical to the invention

02:23:45 1 that's -- that's being framed in the published application.

02:23:48 2 And GREE here failed to present evidence that
02:23:51 3 Supercell had actual notice of the patent applications that
02:23:55 4 issued as the '137 and '655 patents before those patents
02:23:59 5 that issued.

02:24:00 6 And we also believe that suggestions that GREE
02:24:02 7 knew -- or that Supercell knew about Japanese applications
02:24:07 8 or other applications that may or may not be related to the
02:24:10 9 published applications for these asserted patents is
02:24:13 10 legally insufficient to support a finding that provisional
02:24:17 11 damages are appropriate.

02:24:18 12 Thank you, Your Honor.

02:24:21 13 THE COURT: Thank you, counsel.

02:24:22 14 What's the response from Plaintiff?

02:24:27 15 MS. PFINGST: Good afternoon, Your Honor. Taylor
02:24:34 16 Pfingst on behalf of GREE.

02:24:35 17 THE COURT: Good afternoon.

02:24:36 18 MS. PFINGST: Dr. Becker opined that the structure
02:24:39 19 of a reasonable royalty is a running royalty expressed as a
02:24:43 20 percentage of the gross revenues from each accused game.

02:24:47 21 He used that as an initial starting point and then
02:24:50 22 apportioned to arrive at his reasonable royalty rates. He
02:24:53 23 did not rely on the entire market value rule in this case.

02:24:55 24 Dr. Becker arrived at his starting point based on
02:24:59 25 the survey data provided by Dr. Neal and chose to weight

02:25:02 1 the survey data based on the evidence available to him in
02:25:05 2 this case provided by both Supercell and his own research
02:25:09 3 of the industry.

02:25:10 4 He also relied on the opinion of Dr. Akl that in
02:25:13 5 using the starting point for the '655 patent, that the
02:25:18 6 patents are technologically comparable in terms of the
02:25:21 7 '873, '137, and '481 patents.

02:25:26 8 And Dr. Becker opined that a 1.99 percent starting
02:25:30 9 point based on Dr. Neal's survey data and through his own
02:25:34 10 logistical regression analysis and further apportionment
02:25:38 11 led him to a 1.1 percent rate for the '655 patent.

02:25:41 12 He conducted a similar analysis for the '594
02:25:46 13 patent. In terms of Dr. Becker's alternative starting
02:25:51 14 point, the 8.6 percent for the '655 patent also arose from
02:25:57 15 Dr. Neal's survey data.

02:25:57 16 In arriving at this number, Dr. Becker multiplied
02:26:00 17 the likelihood of being a payer -- a paying user by the
02:26:05 18 percent of users that viewed the patented feature as
02:26:08 19 important. And this, again, comes from Dr. Neal's logistic
02:26:12 20 regression in his analysis.

02:26:14 21 Dr. Becker then went on to apportion that value,
02:26:16 22 again, not relying on the entire market value rule. And in
02:26:19 23 this case, Supercell's witnesses testified that they were
02:26:21 24 unable to provide a value for each accused feature in this
02:26:24 25 game. And so Dr. Becker relied on the gross revenues,

02:26:29 1 looked at Dr. Neal's survey data, weighted the evidence in
02:26:32 2 this case, and apportioned to arrive at his reasonable
02:26:35 3 royalty rate.

02:26:36 4 He relied on the same analysis for the '594 patent
02:26:40 5 for both the rate that he suggests, which is 1.27 percent,
02:26:45 6 as well as the alternative starting rates in this case.

02:26:52 7 Supercell argues that Dr. Becker improperly used
02:26:56 8 Dr. Neal's survey data, but, in fact, the evidence of
02:26:59 9 Supercell's own witnesses and the evidence presented in
02:27:02 10 this case indicates that time spent in the game is a useful
02:27:06 11 concept to value patents.

02:27:09 12 However, not all time in the game is productive
02:27:12 13 revenue-generating time. And so the fact that some
02:27:15 14 players, based on Dr. Neal's survey data, indicated that
02:27:19 15 they would spend more time in the game for a feature that
02:27:21 16 they consider to be important was not indicative of
02:27:24 17 positive revenue-generating time.

02:27:26 18 And so Dr. Becker determined, based on Supercell's
02:27:29 19 witness's testimony about grinding in the game, that that
02:27:35 20 data was not required for his analysis here and that he
02:27:37 21 chose to use the data indicating that players would spend
02:27:42 22 less time in the game if an important feature was removed.

02:27:46 23 Dr. Becker, again, relied on Dr. Akl's technical
02:27:50 24 expertise that the '655, '137, '481, and '873 are
02:27:57 25 comparable.

02:27:57 1 And to turn to the notice element briefly,

02:28:00 2 Your Honor, for provisional damages. There was plenty of

02:28:03 3 evidence in the record, going as far back as 2012, that

02:28:06 4 these parties have had a long-standing relationship.

02:28:09 5 We saw evidence of notice letters going back a few

02:28:12 6 years. We saw evidence of the parties communicating. We

02:28:15 7 saw evidence that Supercell had asserted PTAB actions

02:28:19 8 against GREE in this case.

02:28:20 9 And so we think that a judgment as a matter of law

02:28:23 10 is improper on this issue.

02:28:25 11 THE COURT: All right. Thank you, counsel.

02:28:27 12 MS. PFINGST: Thank you, Your Honor.

02:28:27 13 THE COURT: Anything further on the damages issue?

02:28:33 14 MR. DACUS: No, Your Honor. Thank you.

02:28:34 15 THE COURT: All right. I take it both sides have

02:28:39 16 been fully heard on any matters they care to raise under

02:28:43 17 Rule 50(a).

02:28:45 18 Is that correct, Plaintiff?

02:28:45 19 MR. ABSHER: Yes, Your Honor.

02:28:46 20 THE COURT: Is that correct, Defendant?

02:28:48 21 MR. DACUS: We have nothing further, Your Honor.

02:28:49 22 THE COURT: All right.

02:28:50 23 MR. DACUS: And as I've already noted, we -- we

02:28:52 24 filed a written motion, and the Court has already

02:28:55 25 acknowledged that it has considered it, so...

02:28:57 1 THE COURT: All right. Then based on the matters
02:29:02 2 before the Court, including both what's been filed on the
02:29:08 3 docket and what's been presented and argued this afternoon
02:29:10 4 in open court, the Court finds that with regard to the
02:29:15 5 issue of infringement as urged by Plaintiff regarding all
02:29:19 6 five of the patents-in-suit and the correspondingly
02:29:23 7 opposite position of non-infringement urged by the
02:29:25 8 Defendant regarding the same five patents-in-suit, that the
02:29:32 9 evidence in the case is such that judgment as a matter of
02:29:40 10 law under Rule 50(a) should not be granted under either
02:29:45 11 theory, and the Court denies both the Plaintiff's motion
02:29:48 12 and Defendant's motion.

02:29:49 13 Included in this is the denial by the Court of
02:29:53 14 Defendant's motion regarding no willful infringement.

02:29:57 15 Regarding validity and invalidity concerning four
02:30:00 16 of the five asserted patents, particularly being the '655,
02:30:05 17 the '873, the '137, and the '481 patents, the Court finds,
02:30:12 18 likewise, that the diametrically opposed arguments from the
02:30:16 19 parties are such that neither one rises to the level of
02:30:19 20 being granted under Rule 50(a).

02:30:22 21 And, correspondingly, the Court denies both
02:30:27 22 Plaintiff's motion and Defendant's motion with regard to
02:30:31 23 the issue of validity or invalidity as a matter of law.

02:30:33 24 Lastly, with regard to the issue of damages, the
02:30:36 25 Court denies the Defendant's motion that there should be a

02:30:43 1 finding of no damages or limited damages as a matter of law
02:30:47 2 under Rule 50(a) .

02:30:48 3 And, in short, counsel, each of the motions urged
02:30:52 4 this afternoon under Rule 50(a) of the Federal Rules of
02:30:52 5 Civil Procedure with regard to the issues before the Court
02:30:58 6 in this case are denied.

02:30:59 7 I will say that I appreciate your argument, and
02:31:01 8 it's always a pleasure for the Court to hear from young
02:31:07 9 lawyers arguing on the record in court. And I always find
02:31:12 10 it enlightening and edifying.

02:31:15 11 Now, I have 2:30 by the clock on the bench. I'm
02:31:21 12 going to take about a 30-minute recess. And about 3:00
02:31:24 13 o'clock, I'd like those of you that are going to
02:31:27 14 participate in the informal charge conference to come to
02:31:29 15 the door to chambers, and we will let you in, and we will
02:31:32 16 meet in my office and review your competing proposals
02:31:35 17 regarding the Court's final jury instructions and the
02:31:38 18 verdict form, informally.

02:31:42 19 Everyone who has appeared in the case is welcome
02:31:43 20 to participate. It is an informal discussion, and the
02:31:47 21 Court wants to hear in an open and fulsome manner from
02:31:54 22 everybody about the reasons behind the areas where you are
02:31:57 23 not in agreement.

02:31:58 24 And I'll take that into consideration and
02:32:02 25 carefully digest what you've presented in that informal

02:32:06 1 charge conference as a part of subsequently producing what
02:32:10 2 I believe the appropriate and proper final jury charge and
02:32:16 3 verdict form should be.

02:32:18 4 So, with that, I will see you in chambers in 30
02:32:24 5 minutes.

02:32:24 6 The Court stands in recess.

02:32:24 7 COURT SECURITY OFFICER: All rise.

02:42:48 8 (Recess.)

02:43:56 9 (Jury out.)

05:31:29 10 COURT SECURITY OFFICER: All rise.

05:31:31 11 THE COURT: Be seated, please.

05:32:01 12 All right. Counsel, since we recessed for lunch
05:32:11 13 and I excused the jury, I have heard argument and
05:32:16 14 considered both your written and oral submissions regarding
05:32:20 15 motions under Rule 50(a) and have ruled on the bench --
05:32:25 16 from the bench, rather, regarding those motions.

05:32:28 17 We've also conducted a lengthy and informal charge
05:32:31 18 conference in chambers where the latest version of the
05:32:35 19 parties' competing proposals regarding the final jury
05:32:41 20 instructions and verdict have been reviewed by counsel for
05:32:44 21 the parties and the Court.

05:32:45 22 And after a lengthy and fulsome discussion, the
05:32:48 23 Court has considered carefully all the input from counsel
05:32:52 24 for the parties and generated what the Court believes to be
05:32:55 25 the proper and appropriate final jury instruction and

05:32:59 1 verdict form.

05:33:01 2 Printed copies of those documents have been
05:33:05 3 delivered to counsel for both sides with an opportunity to
05:33:10 4 review and consider the same.

05:33:11 5 And I'm now prepared to conduct on the record a
05:33:14 6 formal charge conference where we will review both the
05:33:19 7 charge and the verdict form, and I'll entertain any
05:33:23 8 objections on the record that either party wishes to offer
05:33:25 9 in regard to any portion thereof or any provision that has
05:33:29 10 been omitted and a party believes the same should have been
05:33:33 11 included.

05:33:33 12 With that, what I would ask is that whoever is
05:33:37 13 going to represent Plaintiff and whoever is going to
05:33:40 14 represent Defendant, if you would go to the podium and
05:33:44 15 remain there jointly.

05:33:46 16 My intention is to start with the final jury
05:33:49 17 instructions, and to go through each page page-by-page and
05:33:57 18 inquire at each page if either Plaintiff or Defendant have
05:33:58 19 any objections to either anything included on that page or
05:34:02 20 anything omitted on that page.

05:34:04 21 At that juncture, if you have an objection to
05:34:07 22 lodge, please do so. I'll listen and respond. And then
05:34:10 23 we'll move on to the next page, and we will walk through
05:34:12 24 both the charge and the verdict form on that same
05:34:16 25 page-by-page basis to ensure that each is thoroughly

05:34:19 1 covered and nothing's missed.

05:34:21 2 So, with that, whoever is going to represent in
05:34:27 3 this regard Plaintiff and Defendant, if you will go to the
05:34:29 4 podium.

05:34:30 5 To the extent you're going to share those
05:34:33 6 responsibilities, then whoever is going to start for
05:34:33 7 Plaintiff and Defendant, go to the podium. And then if
05:34:34 8 somebody else is going to pick up midstream, they can
05:34:34 9 simply replace whoever steps away from the podium.

05:34:38 10 All right?

05:34:44 11 And we'll begin with the final jury instructions.

05:34:50 12 Mr. Morlock, you're representing the Plaintiff at
05:34:52 13 this point?

05:34:52 14 MR. MORLOCK: Yes, Your Honor.

05:34:53 15 THE COURT: All right. And, Ms. Kaempf, you're
05:34:56 16 representing the Defendant?

05:34:58 17 MS. KAEMPF: Yes, Your Honor.

05:34:58 18 THE COURT: All right. Turning to the final jury
05:35:00 19 instructions, we'll begin with the first page.

05:35:03 20 Is there objection here from either Plaintiff or
05:35:05 21 Defendant?

05:35:08 22 MS. KAEMPF: No, Your Honor.

05:35:09 23 MR. MORLOCK: No, Your Honor.

05:35:10 24 THE COURT: Turning then to Page 2, is there
05:35:11 25 objection here from either Plaintiff or Defendant?

05:35:16 1 MS. KAEMPF: No, Your Honor.

05:35:17 2 MR. MORLOCK: No, Your Honor.

05:35:18 3 THE COURT: Turning to Page 3, is there objection

05:35:22 4 from either party?

05:35:24 5 MS. KAEMPF: No, Your Honor.

05:35:25 6 MR. MORLOCK: No, Your Honor.

05:35:27 7 THE COURT: Turning next to Page 4, is there

05:35:30 8 objection from either party?

05:35:35 9 MS. KAEMPF: No, Your Honor.

05:35:36 10 MR. MORLOCK: No, Your Honor.

05:35:38 11 THE COURT: Turning next to Page 5 of the final

05:35:44 12 jury instructions, is there objection here from either

05:35:46 13 Plaintiff or Defendant?

05:35:49 14 MR. MORLOCK: None from Plaintiff, Your Honor.

05:35:51 15 MS. KAEMPF: No, Your Honor.

05:35:55 16 THE COURT: All right. Turning next to Page 6, is

05:35:57 17 there objection from either party?

05:36:05 18 MR. MORLOCK: No, Your Honor.

05:36:06 19 MS. KAEMPF: None from Defendant, Your Honor.

05:36:08 20 THE COURT: All right. Next is Page 7, is there

05:36:12 21 objection here from either party?

05:36:19 22 MS. KAEMPF: No, Your Honor.

05:36:19 23 MR. MORLOCK: No, Your Honor.

05:36:20 24 THE COURT: Turning then to Page 8, is there

05:36:24 25 objection from either party?

05:36:33 1 MR. MORLOCK: None from Plaintiff, Your Honor.

05:36:35 2 MS. KAEMPF: No, Your Honor.

05:36:37 3 THE COURT: All right. Then turning next to

05:36:42 4 Page 9 of the final jury instructions, is there objection

05:36:45 5 here from either party?

05:36:50 6 MS. KAEMPF: None from Defendant, Your Honor.

05:36:52 7 MR. MORLOCK: None from Plaintiff, Your Honor.

05:36:56 8 THE COURT: Turning next to Page 10, is there

05:36:58 9 objection from either party?

05:37:06 10 MR. MORLOCK: None from Plaintiff, Your Honor.

05:37:09 11 MS. KAEMPF: No, Your Honor.

05:37:16 12 THE COURT: Turning then to Page 11 of the final

05:37:19 13 jury instructions, is there objection here from either

05:37:21 14 Plaintiff or Defendant?

05:37:30 15 MR. MORLOCK: None from Plaintiff, Your Honor.

05:37:32 16 MS. KAEMPF: Your Honor, there is one issue that I

05:37:48 17 would like to raise, if I may, and I apologize that this

05:37:51 18 didn't come up during the informal conference.

05:37:54 19 But the language at the top of Page 11 that says:

05:37:57 20 When the word "comprising" is used, a product that includes

05:38:01 21 all the limitations or elements of the claim, as well as

05:38:06 22 additional elements, is covered by the claim.

05:38:08 23 THE COURT: Yes.

05:38:08 24 MS. KAEMPF: And I think we -- this came up during

05:38:10 25 the JMOL motion briefing, that in certain instances,

05:38:13 1 additional elements -- inclusion of certain additional
05:38:18 2 elements, depending on the claim language, such as when
05:38:20 3 granting of the second object is mandatory and limiting,
05:38:25 4 when -- when the claimed condition is satisfied. The
05:38:31 5 inclusion of additional elements between the condition
05:38:33 6 being satisfied and the consequence of that condition, the
05:38:40 7 granting of the second object, such -- those additional
05:38:42 8 elements would preclude a finding of infringement.

05:38:47 9 THE COURT: And you're offering those comments as
05:38:51 10 an objection, Ms. Kaempf?

05:38:54 11 MS. KAEMPF: Yes, Your Honor.

05:38:54 12 THE COURT: All right. That objection is
05:38:56 13 overruled.

05:38:57 14 Is there anything else from either party on
05:39:00 15 Page 11?

05:39:02 16 MS. KAEMPF: No, Your Honor.

05:39:03 17 MR. MORLOCK: No, Your Honor.

05:39:04 18 THE COURT: Then we'll turn next to Page 12 of the
05:39:08 19 final jury instructions. Is there objection here from
05:39:10 20 either party?

05:39:12 21 MR. MORLOCK: Yes, Your Honor.

05:39:15 22 Plaintiff respectfully objects to the inclusion on
05:39:18 23 Page 12 of the requirement of a particular sequence of
05:39:24 24 steps required by the claims of the '137 and the '481
05:39:28 25 patent, in the jury instructions.

05:39:29 1 THE COURT: All right. Is there any objection to
05:39:34 2 anything on Page 12 from the Defendant?

05:39:36 3 MS. KAEMPF: No, Your Honor.

05:39:37 4 THE COURT: Plaintiff's objection on Page 12 is
05:39:46 5 overruled.

05:39:47 6 Unless there's something further there, we'll turn
05:39:50 7 to Page 13 of the final jury instructions.

05:39:52 8 And I'll ask if either party has any objection to
05:39:55 9 anything here?

05:39:58 10 MS. KAEMPF: Your Honor, we respectfully --
05:40:03 11 Supercell respectfully objects to the -- to the omission of
05:40:10 12 the joint infringement language, because we believe that,
05:40:13 13 at least for certain claims, the method claims will only be
05:40:21 14 infringed under a joint infringement theory.

05:40:22 15 THE COURT: All right. Anything here on Page 13
05:40:27 16 from Plaintiff?

05:40:28 17 MR. MORLOCK: No, Your Honor.

05:40:30 18 THE COURT: All right. Defendant's objection
05:40:32 19 regarding Page 13 is overruled.

05:40:36 20 Turning next to Page 14, is there any objection
05:40:41 21 here from either Plaintiff or Defendant?

05:40:44 22 MS. KAEMPF: No, Your Honor.

05:40:46 23 MR. MORLOCK: No objection from Plaintiff,
05:40:48 24 Your Honor.

05:40:48 25 THE COURT: All right. Then turning to Page 15,

05:40:55 1 I'll ask if there's objection here from either party?

05:40:59 2 MS. KAEMPF: No, Your Honor.

05:41:00 3 MR. MORLOCK: No objection from Plaintiff,

05:41:05 4 Your Honor.

05:41:05 5 THE COURT: Turning next to Page 16 of the final
05:41:08 6 jury instructions, is there objection here from either
05:41:11 7 party?

05:41:13 8 MS. KAEMPF: Not from Defendant, Your Honor.

05:41:15 9 MR. MORLOCK: Your Honor, Plaintiff respectfully
05:41:18 10 objects to the inclusion of instructions regarding the
05:41:21 11 written description requirement, as there's insufficient
05:41:25 12 evidence presented at trial.

05:41:29 13 THE COURT: That's overruled.

05:41:30 14 Anything further?

05:41:32 15 MR. MORLOCK: None from Plaintiff, Your Honor.

05:41:35 16 THE COURT: Then we'll turn to Page 17. Is there
05:41:38 17 objection here from either party?

05:41:42 18 MR. MORLOCK: Your Honor, just from Plaintiff,
05:41:47 19 briefly. The same objection as to Page 16 continues to
05:41:50 20 Page 17.

05:41:51 21 THE COURT: I understand. That's overruled.

05:41:55 22 MR. MORLOCK: Okay.

05:41:55 23 THE COURT: Anything from Defendant here?

05:41:58 24 MS. KAEMPF: No, Your Honor.

05:41:58 25 THE COURT: All right. Then I'll turn next to

05:42:02 1 Page 18 of the final jury instructions, and ask if either
05:42:06 2 party has any objection to anything included or omitted
05:42:08 3 from this page?

05:42:13 4 MR. MORLOCK: None from Plaintiff, Your Honor.

05:42:16 5 MS. KAEMPF: No, Your Honor.

05:42:28 6 THE COURT: Turning next to Page 19, is there
05:42:31 7 objection here from either party?

05:42:47 8 MS. TURNER: Sorry, Your Honor. Shannon Turner.

05:42:49 9 I'm swapping out for Ms. Kaempf for Supercell.

05:42:52 10 THE COURT: That's fine. We're on Page 19.

05:42:55 11 Is there any objection from Defendant or
05:42:57 12 Plaintiff?

05:42:57 13 MS. TURNER: May I briefly turn back to Page 18,
05:43:01 14 please, and lodge some objections?

05:43:05 15 THE COURT: What's your objection on Page 18?

05:43:08 16 MS. TURNER: On Page 18, under No. 2, that any
05:43:11 17 patent that issued or any printed publication, we object to
05:43:15 18 not including the words "including videos." And the
05:43:20 19 same --

05:43:20 20 THE COURT: The -- go ahead.

05:43:20 21 MS. TURNER: And the same objection under 4, any
05:43:23 22 patents that issued or any printed publications, we object
05:43:28 23 to not including videos.

05:43:30 24 THE COURT: All right. That objection is
05:43:31 25 overruled.

05:43:32 1 MS. TURNER: Your Honor, one other objection on
05:43:34 2 this page. We object to the removal of Appendix A, which
05:43:40 3 listed the prior art references.

05:43:41 4 THE COURT: That's overruled.

05:43:42 5 I'll turn back to Page 19. Is there any objection
05:43:46 6 here from either party?

05:43:48 7 MR. MORLOCK: No objection from Plaintiff,
05:43:49 8 Your Honor.

05:43:49 9 MS. TURNER: No objection from Defendant.

05:43:50 10 THE COURT: Then turning next to Page 20. Is
05:43:53 11 there objection here from either party?

05:44:03 12 MR. MORLOCK: No objection from Plaintiff,
05:44:05 13 Your Honor.

05:44:05 14 MS. TURNER: No objection from Defendant.

05:44:10 15 THE COURT: Turning then to Page 21 of the final
05:44:13 16 jury instructions, is there objection here from either
05:44:16 17 party?

05:44:21 18 MR. MORLOCK: No objection from Plaintiff,
05:44:24 19 Your Honor.

05:44:24 20 MS. TURNER: No objection from Supercell.

05:44:26 21 THE COURT: Turning then to Page 22, is there
05:44:31 22 objection here from either party?

05:44:43 23 MR. MORLOCK: Your Honor, the Plaintiff
05:44:45 24 respectfully objects to the inclusion of secondary
05:44:48 25 consideration factors that were not addressed with evidence

05:44:51 1 at trial.

05:44:52 2 THE COURT: You want to be more specific as to
05:44:54 3 which of these factors you believe were not addressed at
05:44:57 4 trial?

05:44:58 5 MR. MORLOCK: Yes, Your Honor. Specifically, on
05:45:00 6 Page 22, Item No. 2 and 3 and 4.

05:45:06 7 THE COURT: All right.

05:45:08 8 MS. TURNER: Your Honor, Supercell objects to the
05:45:11 9 omission of the secondary considerations of
05:45:15 10 non-obviousness, whether the claimed invention achieved
05:45:19 11 unexpected results, whether persons having ordinary skill
05:45:23 12 in the art of the invention expressed surprise or disbelief
05:45:23 13 regarding the claimed invention, and whether the inventor
05:45:26 14 proceeded contrary to accepted wisdom in the field.

05:45:29 15 THE COURT: All right. Counsel, both objections
05:45:30 16 are overruled.

05:45:34 17 MS. TURNER: Your Honor, I have one other
05:45:35 18 objection to this page.

05:45:37 19 THE COURT: Please present it.

05:45:39 20 MS. TURNER: Thank you. On the last sentence, in
05:45:40 21 deciding what the level of ordinary skill is, we object to
05:45:43 22 the omission of the language "in the field of gaming."

05:45:45 23 THE COURT: All right. That's overruled.

05:45:50 24 Turning next to Page 23 of the final jury
05:45:52 25 instructions, is there objection here from either Plaintiff

05:45:54 1 or Defendant?

05:45:58 2 MR. MORLOCK: No objection from Plaintiff,
05:46:00 3 Your Honor.

05:46:00 4 MS. TURNER: No objection from Defendant.

05:46:03 5 THE COURT: Turning then to Page 24, is there
05:46:05 6 objection from either party?

05:46:16 7 MR. MORLOCK: No objection from Plaintiff,
05:46:17 8 Your Honor.

05:46:17 9 MS. TURNER: No objection from Defendant.

05:46:20 10 THE COURT: Turning then to Page 25, is there any
05:46:23 11 objection here?

05:46:23 12 MR. MORLOCK: No objection from Plaintiff,
05:46:30 13 Your Honor.

05:46:30 14 MS. TURNER: Your Honor, Supercell objects to the
05:46:43 15 omission of the language in determining -- or as a separate
05:46:50 16 paragraph from the Georgia-Pacific factors: In determining
05:46:53 17 a reasonable royalty, you may also consider evidence
05:46:55 18 concerning the availability of non-infringing alternatives
05:46:57 19 of the patented invention. A non-infringing alternative
05:47:01 20 must be acceptable -- must be an acceptable product that is
05:47:04 21 licensed under the patent or that does not infringe the
05:47:06 22 patent.

05:47:07 23 THE COURT: That objection is overruled.

05:47:10 24 Is there anything further from either party on
05:47:14 25 Page 25?

05:47:16 1 MS. TURNER: Not from Defendant.

05:47:17 2 THE COURT: Anything further on this page from

05:47:19 3 Plaintiff?

05:47:20 4 MR. MORLOCK: Nothing further, Your Honor.

05:47:21 5 THE COURT: Then we'll turn to Page 26 of the

05:47:23 6 final jury instructions. Is there objection here from

05:47:27 7 either party?

05:47:33 8 MR. MCMICHAEL: Your Honor, just briefly.

05:47:35 9 Supercell objects to the omission of language

05:47:36 10 regarding a provisional damages period. And, specifically,

05:47:39 11 what we proposed is the construction -- constructive

05:47:42 12 knowledge, willful blindness, and knowledge of the related

05:47:46 13 patents and -- or related pat -- published patent

05:47:50 14 applications is not sufficient to satisfy the actual notice

05:47:53 15 requirement, and that, similarly, alleged knowledge by

05:47:55 16 outside counsel and general monitoring of competitor

05:47:58 17 activities or patents is likewise insufficient to satisfy

05:48:02 18 the actual notice requirement.

05:48:03 19 THE COURT: All right. Mr. McMichael, that

05:48:06 20 objection is overruled.

05:48:08 21 Anything further from either party on Page 26?

05:48:12 22 MR. MCMICHAEL: Your Honor, I don't know that this

05:48:14 23 is specific to Page 26, but we would also object in the

05:48:20 24 general discussion of damages to the omission of an

05:48:24 25 instruction regarding the entire market value rule.

05:48:26 1 THE COURT: That's overruled.

05:48:27 2 MR. MCMICHAEL: Thank you, Your Honor.

05:48:33 3 MR. MORLOCK: No objection to Page 26 from

05:48:36 4 Plaintiff, Your Honor.

05:48:36 5 THE COURT: Then let's turn to Page 27. Let me

05:48:39 6 ask if either party has an objection to anything here or

05:48:42 7 anything that was omitted from this page?

05:48:45 8 MR. MORLOCK: Your Honor, Plaintiff respectfully

05:48:47 9 objects to the omission of inclusion of an instruction

05:48:50 10 regarding willfulness enhancement.

05:48:52 11 THE COURT: Overruled.

05:48:54 12 Anything from Defendant here?

05:48:57 13 MR. MCMICHAEL: No objection from Defendant.

05:48:59 14 THE COURT: All right. Page 28 merely references

05:49:03 15 closing arguments to be presented by counsel. And I assume

05:49:06 16 you have no objections to Page 28.

05:49:09 17 So we'll turn to Page 29, and I'll ask if there's

05:49:13 18 any objection to either Page 28 or Page 29?

05:49:16 19 MR. MCMICHAEL: Your Honor, this isn't so much an

05:49:19 20 objection, but I don't know if having Defendants being

05:49:22 21 plural on Page 28 will cause any confusion. I sort of

05:49:26 22 doubt it will, but I just wanted to note it.

05:49:32 23 THE COURT: Well, quite honestly, counsel, what

05:49:38 24 you're seeing is usually reserved for the Court's copy

05:49:42 25 only.

05:49:42 1 My intention is merely to show what's bracketed at
05:49:46 2 the top of Page 28 and what's given to the jury when they
05:49:49 3 retire simply to say: Attorneys present closing arguments.

05:49:53 4 MR. MCMICHAEL: Understood, Your Honor.

05:49:54 5 THE COURT: With that clarification, do you have
05:49:56 6 any objection?

05:49:56 7 MR. MCMICHAEL: We do not, Your Honor. Thank you.

05:49:58 8 THE COURT: Any objection to anything on Page 29,
05:50:01 9 counsel?

05:50:01 10 MR. MORLOCK: No objection from Plaintiff,
05:50:03 11 Your Honor.

05:50:03 12 MR. MCMICHAEL: No objection from Defendant.

05:50:05 13 THE COURT: Any objection to anything on the final
05:50:08 14 page of the final jury instructions, Page 30?

05:50:11 15 MR. MORLOCK: No objection from Plaintiff,
05:50:14 16 Your Honor.

05:50:14 17 MR. MCMICHAEL: And no objection from Defendant.

05:50:17 18 THE COURT: All right. Then we'll turn to the
05:50:19 19 verdict form.

05:50:19 20 We'll begin with the cover page, which is Page 1.

05:50:28 21 Is there an objection here from either Plaintiff
05:50:32 22 or Defendant?

05:50:34 23 MR. DACUS: None from Defendant, Your Honor.

05:50:35 24 MR. MORLOCK: None from Plaintiff, Your Honor.

05:50:37 25 THE COURT: Page 2, is there any objection from

05:50:41 1 either party?

05:50:42 2 MR. DACUS: None from Defendant.

05:50:43 3 MR. MORLOCK: None from Plaintiff, Your Honor.

05:50:44 4 THE COURT: Page 3, is there any objection from

05:50:47 5 either party?

05:50:48 6 MR. DACUS: Not from Defendant.

05:50:49 7 MR. MORLOCK: None for Plaintiff, Your Honor.

05:50:51 8 THE COURT: Page 4 where Question 1 is found, is

05:50:55 9 there objection here from either party?

05:50:56 10 MR. DACUS: Yes, Your Honor. Supercell objects to
05:50:59 11 the Court's failure to ask the infringement question on a
05:51:04 12 claim-by-claim basis.

05:51:06 13 THE COURT: Is there any objection from Plaintiff,
05:51:09 14 Your Honor?

05:51:09 15 MR. MORLOCK: No objection from Plaintiff,
05:51:11 16 Your Honor.

05:51:11 17 THE COURT: Defendant's objection is overruled.

05:51:13 18 Turning next to Page 5 of the verdict form where
05:51:13 19 Question 2 is found, is there objection here from either
05:51:16 20 party?

05:51:16 21 MR. DACUS: Not from Defendant, Your Honor.

05:51:17 22 MR. MORLOCK: No objection from Plaintiff,
05:51:19 23 Your Honor.

05:51:19 24 THE COURT: Turning then to Page 6 where
05:51:21 25 Question 3 of the verdict form is located.

05:51:23 1 Is there objection here from either party?

05:51:25 2 MR. DACUS: Your Honor, Supercell objects to the

05:51:28 3 inclusion of Question 3 before the damages question and

05:51:33 4 believes that it should be -- the willfulness question

05:51:36 5 should be asked at the end of the verdict form after the

05:51:39 6 damages question.

05:51:40 7 THE COURT: Any objection from Plaintiff with

05:51:42 8 regard to anything on Page 6?

05:51:44 9 MR. MORLOCK: No objection from Plaintiff,

05:51:46 10 Your Honor.

05:51:46 11 THE COURT: Defendant's objection is overruled.

05:51:48 12 Turning then to Page 7 where Question 4A of the

05:51:53 13 verdict form is found, together with the instructions, is

05:51:56 14 there objection here from earth party?

05:51:59 15 MR. DACUS: Yes, Your Honor. Supercell has an

05:52:00 16 objection, and I want to focus on the last four words in

05:52:03 17 the question that say "through the date of trial."

05:52:08 18 Including that is potentially inconsistent with Question 4B

05:52:12 19 which ask -- asks whether they award a lump sum or a

05:52:16 20 running royalty.

05:52:17 21 If the jury was to award a lump sum and yet write

05:52:24 22 in a damage amount, those -- I believe that might be an

05:52:28 23 inconsistent verdict because they're awarding a lump sum

05:52:32 24 through the expiration of the patents, yet the question

05:52:35 25 asks through date of trial. S.

05:52:35 1 O we would object to those one, two, three --
05:52:38 2 that's actually five words "through the date of trial." If
05:52:40 3 the Court would strike those five words, we would have no
05:52:43 4 objection.

05:52:44 5 THE COURT: Is there any objection here from
05:52:45 6 Plaintiff?

05:52:45 7 MR. MORLOCK: No objection from Plaintiff,
05:52:47 8 Your Honor.

05:52:47 9 THE COURT: I'm going to grant Defendant's
05:52:50 10 objection. I'll modify Question 4A to end after the word
05:52:54 11 "infringement."

05:52:56 12 MR. DACUS: Thank you, Your Honor.

05:52:56 13 THE COURT: Turning then to Page 8 where
05:52:59 14 Question 4B is found, is there objection here from either
05:53:02 15 party?

05:53:03 16 MR. DACUS: Not from Supercell.

05:53:04 17 MR. MORLOCK: No objection from Plaintiff,
05:53:05 18 Your Honor.

05:53:05 19 THE COURT: Finally, turning to Page 9, which is
05:53:09 20 the final page of the verdict form calling for the
05:53:13 21 signature of the jury foreperson, is there objection from
05:53:15 22 either party here?

05:53:16 23 MR. DACUS: Not from Supercell.

05:53:17 24 MR. MORLOCK: No objection from Plaintiff,
05:53:18 25 Your Honor.

05:53:18 1 THE COURT: All right. Thank you, counsel. That
05:53:20 2 completes the formal charge conference.

05:53:24 3 Let me remind both sides to be prepared tomorrow
05:53:35 4 morning before I bring in the jury to read into the record
05:53:39 5 any items from the list of pre-admitted exhibits used
05:53:45 6 during today's portion of the trial.

05:53:46 7 Let me inquire of both sides. Who on each side
05:53:50 8 will be presenting closing arguments?

05:53:52 9 MS. SMITH: Mr. Moore for Plaintiff, Your Honor.

05:53:54 10 MR. DACUS: Mr. Sacksteder on behalf of Supercell,
05:53:57 11 Your Honor.

05:53:57 12 THE COURT: All right. Ms. Smith -- Ms. Smith,
05:54:01 13 please be sure that Mr. Moore is aware that he must use at
05:54:04 14 least 50 percent of his closing time in his first closing
05:54:09 15 argument.

05:54:09 16 MS. SMITH: I've shared that with him already,
05:54:12 17 Your Honor.

05:54:12 18 THE COURT: All right. My intention is to make
05:54:14 19 the one change that I have approved by granting Defendant's
05:54:18 20 objection to one of the questions in the verdict form,
05:54:23 21 otherwise, to reproduce eight copies of the final jury
05:54:27 22 instructions and one clean copy of the verdict form to be
05:54:29 23 sent back to the jury when they retire to deliberate
05:54:32 24 tomorrow.

05:54:32 25 If there are any issues that arise as a part of

05:54:39 1 the parties' overnight meet-and-confer obligations with
05:54:42 2 regard to the possible use of demonstratives during closing
05:54:47 3 arguments tomorrow, I would encourage both sides to work
05:54:51 4 diligently to try to avoid any such problems.

05:54:54 5 If there are unavoidable problems, despite
05:54:58 6 strenuous and concerted efforts to meet and confer, I will
05:55:01 7 be available by 7:30 tomorrow morning in chambers to take
05:55:06 8 those up with counsel. And I will expect the same
05:55:09 9 overnight reporting and early morning binder from the
05:55:13 10 parties that we've used on demonstrative disputes
05:55:17 11 throughout the trial.

05:55:17 12 Are there any questions from either side before we
05:55:19 13 recess for the evening?

05:55:22 14 MS. SMITH: Your Honor, we have not built in an
05:55:24 15 exchange schedule for closing demonstratives. So we -- we
05:55:28 16 were planning on doing it right before closing, giving the
05:55:32 17 Court some time to rule, perhaps closer to 7:00 than
05:55:37 18 allowing the other side to have our demonstratives
05:55:40 19 overnight.

05:55:41 20 THE COURT: Well, I will say this, Ms. Smith: As
05:55:43 21 you well know, one of the things the Court strives to avoid
05:55:49 22 wherever and whenever possible are objections that might
05:55:52 23 arise during closing arguments.

05:55:54 24 I can understand your willingness -- or your
05:55:59 25 preference not to show your hand, so to speak, any longer

05:56:03 1 than necessary, and I'm sure the Defendant feels the same
05:56:05 2 way about their arguments, but I don't want to leave
05:56:09 3 unaddressed the possibility that a demonstrative is viewed
05:56:15 4 as objectionable by the other side, and there's not an
05:56:18 5 opportunity to address it before we get into the middle of
05:56:23 6 closing arguments, and I hear about it for the first time.

05:56:25 7 Mr. Dacus, what's Defendant's view on how you all
05:56:28 8 should share and communicate any disputes regarding
05:56:32 9 demonstratives and yet not provide each other with an undue
05:56:38 10 amount of time to prepare a counter?

05:56:41 11 MR. DACUS: I'll start with a confession,
05:56:43 12 Your Honor. I'm -- I'm really not up to speed on this, and
05:56:46 13 I wasn't aware of whether there was or was not or when that
05:56:51 14 deadline would --

05:56:52 15 THE COURT: All right. Well --

05:56:52 16 MR. DACUS: -- be. So as I understood what
05:56:55 17 Ms. Smith said, the proposal was for 7:00 a.m. in the
05:56:58 18 morning to disclose.

05:56:59 19 MS. SMITH: And -- and I -- Your Honor, I --
05:57:01 20 Mr. Dacus doesn't -- isn't aware because we don't have an
05:57:07 21 agreement on an exchange at all. And so I was just
05:57:09 22 proposing 7:00 in advance of the 7:30 meeting in the case
05:57:13 23 that we have objections. So Mr. Dacus was kind of ambushed
05:57:16 24 by me right now on the 7:00 o'clock proposal.

05:57:19 25 THE COURT: All right. Then let me cut through

05:57:21 1 the gordian knot for everybody.

05:57:24 2 The parties will exchange their proposed
05:57:27 3 demonstratives to be used during closing arguments by
05:57:30 4 6:00 a.m. tomorrow morning.

05:57:32 5 MS. SMITH: Thank you, Your Honor.

05:57:33 6 THE COURT: You'll meet and confer over that
05:57:33 7 intervening hour, and if there are disputes that cannot
05:57:36 8 otherwise be resolved between the parties, then at 7:00
05:57:38 9 o'clock, you'll deliver a three-ring binder to chambers
05:57:42 10 outlining your respective disputes and including a
05:57:46 11 representative copy of the demonstrative or demonstratives
05:57:49 12 in issue.

05:57:50 13 MR. DACUS: Yes, Your Honor.

05:57:53 14 MS. SMITH: Thank you, Your Honor.

05:57:53 15 MR. DACUS: Thank you.

05:57:53 16 THE COURT: All right. Are there any other issues
05:57:55 17 that need to be addressed or questions to be raised before
05:57:58 18 we recess for the evening?

05:58:00 19 MS. SMITH: Not for Plaintiff, Your Honor.

05:58:02 20 MR. DACUS: Not from Defendant.

05:58:03 21 THE COURT: All right. Counsel, that completes
05:58:05 22 everything the Court has on its agenda for today. Thank
05:58:08 23 you for your hard work this afternoon.

05:58:09 24 We stand in recess until tomorrow morning.

05:58:12 25 COURT SECURITY OFFICER: All rise.

05:58:13 1 (Recess.)

2

3 CERTIFICATION

4

5 I HEREBY CERTIFY that the foregoing is a true and
6 correct transcript from the stenographic notes of the
7 proceedings in the above-entitled matter to the best of my
8 ability.

9

10

11 /S/ Shelly Holmes _____
12 SHELLY HOLMES, CSR, TCRR
13 OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/2020

9/16/2020
Date

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